



Civil Resolution Tribunal

Date Issued: June 22, 2023

File: SC-2022-006533

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Roberts v. Flair Airlines Ltd.*, 2023 BCCRT 525

BETWEEN:

DEBORAH ROBERTS

APPLICANT

AND:

FLAIR AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a cancelled flight booking for a flight operated by the respondent airline, Flair Airlines Ltd. (Flair). On July 27, 2021, the applicant, Deborah Roberts,

booked an August 2, 2021 flight, through a third party booking website that is not a party to this proceeding. Ms. Roberts says Flair did not substantively respond to her multiple requests for information about travelling with her dog, and so she cancelled the flight on July 30, 2021. Flair undisputedly denied her \$602.90 refund request because she cancelled outside the 24-hour grace period. Ms. Roberts says Flair unfairly failed to respond to her in a timely way. She claims \$602, plus \$1,000 for Flair's alleged "terrible service" and her time and frustration.

2. Flair says Ms. Roberts contacted it on July 29, 2021 about how to book her pet, though she had already added her pet to the flight on July 28, 2021. Flair says it responded to her on July 31, 2021, after she had already cancelled the flight on July 30. As noted, Flair says Ms. Roberts is not entitled to a refund as she cancelled the flight outside the 24-hour grace period.
3. Ms. Roberts is self-represented. Flair is represented by an employee.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. As the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
6. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be

admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are whether Ms. Roberts is entitled to a \$602 refund for her flight due to Flair's alleged substandard communications, and whether Ms. Roberts is entitled to \$1,000 in damages for her time and frustration.

EVIDENCE AND ANALYSIS

9. As the applicant in a civil proceeding like this one, Ms. Roberts must prove her claim on a balance of probabilities (meaning "more likely than not"). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context. I note Ms. Roberts chose not to provide any final reply submissions, despite having the opportunity to do so.
10. As noted, on July 27, 2021 Ms. Roberts booked an August 2, 2021 flight through a third party booking website. That third party is not a party to this dispute. She paid \$458 and at that point undisputedly had not booked her pet's travel with her. This is confirmed by the submitted flight itinerary that does not show any "pet in cabin" charge, unlike a later July 28 itinerary discussed below.
11. Ms. Roberts emailed Flair on July 27 at 3pm about bringing her dog, saying she could not find out how to add that she was bringing the dog or where to pay. Since Ms. Roberts booked through a third party, I find any difficulties about her initial booking for the dog is not Flair's responsibility. Ms. Roberts submits that she sent the email immediately so as to contact Flair within 24 hours. I infer Ms. Roberts refers to trying to comply with the 24-hour grace period in the event she wanted to cancel her flight.

12. Ms. Roberts says she called, texted, and emailed Flair with no response, other than a “canned email” Flair sent her on July 28, 2021. Flair’s July 28 email in evidence shows it acknowledged Ms. Roberts’ email and said that it would be “right with you” but was receiving higher than normal requests at that time. I note this was during the COVID-19 pandemic. Flair wrote that Ms. Roberts could make “all changes to your reservation online” and gave a website address. Flair concluded by noting that if Ms. Roberts’ travel “is within 72 hours, please type “Travel in 72 hours” as the subject line and that it would have its team resolve her request. On the evidence before me, Flair responded within 72 hours of Ms. Roberts’ communication that included that subject line.
13. In any event, Ms. Roberts says by July 28, 2021 she “did figure out” how to bring her dog but had still not been able to talk to anyone from customer service or receive anything other than the “canned email”. At this point, Ms. Roberts says she was aware the flight charge increased to \$602.90 to include her dog. Flair’s July 28, 2021 email enclosed Ms. Roberts’ flight itinerary that showed her pet’s inclusion with her on the flight.
14. On July 30, 2021, Ms. Roberts emailed support@flyflair.com explaining she had been on hold for 2 days, and texting, and wrote “it wasn’t safe for me to travel now” and that she wanted a refund rather than a travel credit. Ms. Roberts says she received the same “canned email” she received before. Later that day, Ms. Roberts cancelled her flight. As noted, Flair then sent her a “comprehensive response” on July 31, 2021 about her dog’s travel.
15. In short, Ms. Roberts’ claim is based on her inability to get more than Flair’s July 28 “canned email” response for 2 to 3 days, about her travel with her dog. In one of her emails in evidence, she says had she been able to talk to someone, she would have cancelled her flight. However, Ms. Roberts does not adequately explain why she waited before cancelling on July 30 and how talking to someone earlier would have made any difference.
16. I find Ms. Roberts’ claim must fail for the following reasons.

17. First, Ms. Roberts' argument is essentially that Flair's delay in responding to her communications within those 1st 24 hours makes it liable for the refund. Otherwise, the tariff says that after 24 hours, Flair "does not refund flights – only changes are possible." Further, it says that if bookings were made through a travel agent (as was the case here), cancellations must be made through them. Yet, there is nothing in the parties' contract, including the applicable tariff, that says Flair will respond to passenger inquiries within a specified time period. The tariff's Rule 26 titled 'Refunds' undisputedly says that a passenger can cancel within 24 hours of booking. Based on Ms. Roberts' own submission, I find she was aware of this 24-hour deadline.
18. Second, I find Flair's "canned email" reasonable in the circumstances, and I also find its more specific response on July 31, also reasonable in the circumstances.
19. Third, Ms. Roberts knew when she booked the flight it was non-refundable unless she cancelled within 24 hours of booking. It was her choice to book the flight and then try to sort out her inquiries about her dog, instead of the other way around. I find Flair had no contractual or any other legal obligation to respond to Ms. Roberts' inquiry before it did so.
20. Fourth, I find Ms. Roberts received the information she required about travelling with her dog by July 28. Plus, Flair said it would reply within 72 hours and then did so. In any event, at that point, on July 28, Ms. Roberts knew the 24-hour grace period was up or nearly so. Yet, she cancelled the flight on July 30, knowing then she was outside the 24-hour grace period. Further, based on her own email to Flair, I find she cancelled because she felt it was unsafe for her to travel (due to the pandemic), and not because she did not have enough information about travelling with her dog. As Flair undisputedly notes, Ms. Roberts could have contacted her travel agency about her dog's travel, but for reasons that are not explained did not do so.
21. Next, Ms. Roberts relies on negative reviews of Flair posted online. I find those reviews irrelevant to this dispute, as they do not address the parties' contract or their particular situation. I place no weight on the other Flair customer reviews.

22. In summary, I find Flair’s communications were not unreasonable or untimely. I find it unproven that Flair owed Ms. Roberts a response to her inquiries about her dog within 24 hours, which is what needed to happen in order for her to obtain the refund under the tariff. I find Ms. Roberts knew that she had only 24 hours to cancel in order to get a refund, and she booked the flight anyway. I find Flair had no contractual or legal obligation to respond to her sooner than it did, which was on July 28 and then more substantively on July 31. It was Ms. Roberts’ choice to cancel her flight on July 30, knowing that she was not entitled to a refund. I dismiss her \$602 refund claim.
23. Given my conclusions above, I similarly dismiss the \$1,000 aspect of her claim for time and frustration. I find nothing unreasonable about the timing or content of Flair’s communications. In any event, the CRT generally does not order compensation for “time spent” and I see no reason to do so here. Further, Ms. Roberts submitted no supporting evidence, such as medical evidence, to warrant any compensation for the alleged inconvenience and frustration.
24. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Ms. Roberts was not successful, I dismiss her claim for reimbursement of paid CRT fees. Flair did not pay CRT fees and neither party makes any claim for dispute-related expenses.

ORDER

25. I dismiss Ms. Roberts’ claim and this dispute.

Shelley Lopez, Vice Chair